

**International Paper and Local Union 106, Firemen & Oilers Conference, SEIU, AFL-CIO. Case 3-CA-20001**

April 30, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN  
AND BRAME

On October 24, 1997, Administrative Law Judge Steven Davis issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to adopt the judge's rulings, findings,<sup>1</sup> and conclusions, and to adopt the recommended Order.

**ORDER**

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> In agreeing with the judge that the Respondent did not violate Sec. 8(a)(5) of the Act by refusing to execute a separate collective-bargaining agreement with the Charging Party covering only the powerhouse employees, we rely solely on his primary rationale that the Charging Party and three locals of the United Paperworkers International Union (UPIU) are a joint representative of a mill-wide bargaining unit. We find it unnecessary to pass on his alternative rationale that even if the Charging Party and the UPIU locals are not a joint representative, the four Unions were engaged in joint bargaining, and the Charging Party's attempt to withdraw from such bargaining was untimely.

*Alfred Norek, Esq.*, for the General Counsel.  
*Andrew Zelman, Esq. (Klein, Zelman, Rothermel & Dichter, L.L.P.)*, of New York, New York, for the Respondent.  
*Ronald Stone*, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

STEVEN DAVIS, Administrative Law Judge. Based on a charge filed on April 8, 1996, by Local Union 106, Firemen & Oilers Conference, SEIU, AFL-CIO (Local 106), a complaint was issued against International Paper (Respondent) on August 28, 1996.

The complaint alleges essentially that (a) Local 106 was the exclusive, recognized collective-bargaining representative of a unit of employees employed in the powerhouse, (b) Local 106 and Respondent reached complete agreement on terms and conditions of employment of the unit to be incorporated in a collective-bargaining agreement, and (c) Respondent refused the request of Local 106 that it execute the agreement.

Respondent's answer denied all of the above allegations, and set forth certain affirmative defenses. On March 24 and

25, 1997, a hearing was held before me in Albany, New York.

On the evidence presented in this proceeding, and my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and Respondent and oral argument made by Local 106, I make the following:

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a New York corporation, having facilities located in various States of the United States, including a facility located in Corinth, New York, has been engaged in the manufacture, sale, and distribution of paper and related products. During the past year, Respondent sold and shipped goods and materials valued in excess of \$50,000 from its Corinth facility directly to points located outside New York State. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent also admits and I find that Local 106 has been a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. The Facts**

**1. The mill and the power plant**

Respondent operates a papermill called the Hudson River Mill or Palmer Falls Mill, which is located on the Hudson River. The facility, which employs about 500 hourly paid employees, consists of several separate buildings in which different operations occur, transforming logs into coated paper.

One of the buildings, the power plant,<sup>1</sup> is situated 50 to 100 yards from the paper-making building. The power plant houses a 1000-pound pressure boiler which makes steam which is supplied to a turbine generator, which in turn generates electricity for use throughout the mill.

About 32 employees work in the power plant itself. Of those, three are mechanics who work in the power plant, but also spend much of their time in other areas of the mill, repairing steam leaks. Ten others, who are considered members of the power plant, work in other buildings in the mill, for example four are turbine operators who operate a turbine which drives the paper machine, and six others work on paper machines, or are mechanics. Also considered part of the power department are employees who operate power stations outside the power plant. They are called hydro operators, and spend most of their time at those stations. The complaint alleges that the Union has been the recognized, exclusive collective-bargaining representative of the following appropriate collective-bargaining unit:

All hourly paid employees employed in the powerhouse, including assistant foremen, operator-power plant, control room operator, assistant power plant operator, hydro operator, turbine operator, utility, clerk/-checker, senior maintenance man and maintenance man;

<sup>1</sup> Also referred to as the powerhouse or power department.

excluding all other employees, guards, and supervisors as defined in the Act.

However, section 3 of the collective-bargaining agreement states that “employees who come under this Agreement and are entitled to representation by their respective Union include all those employed inside and outside the plant except [managerial employees].”

## 2. Collective-bargaining history

From 1979 to the present, Respondent has executed successive, single collective-bargaining agreements with the United Paperworkers International Union (UPIU) and the International Brotherhood of Firemen and Oilers (IBFO). All such agreements contain the following recognition clause:

The International Paper Company agrees to recognize the United Paperworkers International Union and the International Brotherhood of Firemen and Oilers as the agencies representing their membership in the Hudson River Mill for the purpose of collective bargaining.

The collective-bargaining agreement has been administered by four local unions—for the UPIU, Locals 4, 6, and 7 and for the Firemen & Oilers, Local 106. Generally, each local union represents separate employees working in different departments. Thus, Local 106 represents the power plant employees, and the UPIU locals represent employees working in various paper-making operations or maintenance mechanics.

New hires are employed in a labor pool, and are sent to work in various departments as needed. Pursuant to the union-security clause, employees are required to join the local union which represents employees in the department in which they are working on their 30th day of employment. Vacancies in permanent positions are posted, and employees in the labor pool may bid for such positions, which are entry-level jobs.

On receiving a permanent position, the employee generally joins the local union which represents the employees in that department, but he is not required to do so. Thus, an employee who is a member of one of the UPIU locals as a result of being in a department represented by that local on his 30th day, may receive a permanent position in the power plant. Such an employee would usually join Local 106, but may instead continue to remain a member of UPIU Local 4.<sup>2</sup>

On becoming a permanent employee in an entry-level position in a department, the employee may move into higher positions in the department, through seniority and on passing certain certification tests. Each department has its own supervisors.

## 3. The administration of the unions

Each of the four locals involved here represent only employees employed at the Hudson River Mill. Local 106 has represented power plant employees at the Hudson River Mill

<sup>2</sup> As of April 1996, five employees were members of Local 106 who no longer worked in the power plant, and had been permanently assigned to other departments. Also, one employee who worked in the power plant was a member of UPIU Local 4.

since 1939. The UPIU locals or their predecessors have represented the paperworkers at the Mill since 1937.

Local 106 and the three UPIU locals each have their own separate constitution and bylaws, elect their own officers, and have regular membership meetings. Local 106 maintains its own bank account, and has its own bulletin board in the plant. Each local has its own grievance procedure and processes its grievances itself for those employees it represents.

Local 106 has no input into the administration, affairs, or operations of any of the UPIU locals, and similarly those three locals have no involvement in the business of Local 106.

## 4. The 1995 collective-bargaining negotiations

The collective-bargaining agreement entered into in 1991 was due to expire on October 31, 1995.<sup>3</sup> The terms of that agreement are applicable to all employees regardless of the position held or which union represents them. However, the contract contains certain wage rates specifically applicable to positions identified by department.

In August 1995, Local 106 sent a notice to Respondent of its intent to reopen the contract for negotiations for a successor agreement. The notice was sent “on behalf of all the signatory unions to the agreement.” The signatory page of the expiring contract states that the Respondent’s offer was “ratified by a majority of union members . . . [and] constitutes the parties’ Labor Agreement.” It is signed by the presidents of Local 106 and the four UPIU locals.

In the 1995 negotiations, each local union met separately with Respondent to discuss “local issues”—those issues which concerned their separate work areas, such as the installation of a bathroom, and improved ventilation of certain work areas. Those local issues were resolved prior to the beginning of the substantive collective-bargaining negotiations.

For the “general” negotiations, the four locals prepared and submitted one joint agenda. Respondent submitted one agenda to the Unions. The Unions had one bargaining committee comprised of representatives from each of the four locals, and an International representative of the UPIU.<sup>4</sup> In 1995, UPIU International Representative Robert Beard was the chief spokesman for the four locals.

Following negotiations, on October 16, Respondent presented its “best offer,” which consisted of a single offer to the four locals. Under the terms of the offer, increases in wages and benefits would become effective on November 1. The offer provided, however, that if it was not ratified or executed on a timely basis, all improvements would become effective only on ratification and execution of a new contract, and that subsequent improvements would be effective on the anniversary date of execution.

On October 25, a ratification vote was held by all four locals at the Emergency Squad Building in Corinth. As employees came into the building to vote, they met with officials of their respective unions, discussed the offer, and then voted. Each local had its own, separate ballot box, and members of each local cast a ballot which was placed in the ballot box for that local. At the end of the balloting, each local tallied the ballots contained in its box.

<sup>3</sup> All dates hereafter are in 1995, unless otherwise stated.

<sup>4</sup> In the 1991 negotiations an International representative of the Firemen & Oilers was present.

The results of the balloting were that members of Local 106 voted to ratify the contract, but that the UPIU locals voted to reject Respondent's offer. The ballots of all four locals were then combined and the result of the pooled ballots was that the offer was rejected. Respondent was notified that the proposed contract was rejected.

Within days following the balloting, the four locals then arranged another negotiation session with Respondent to see if it would improve its offer. Respondent refused to revise its offer, and advised the unions that ratification of a new agreement would be deemed timely if it occurred on or before November 10.

On November 10, another ratification vote took place, resulting in the same outcome. Local 106 again voted to ratify the contract, and the three UPIU locals voted to reject it. Similarly, the votes of all four locals were combined to determine whether the contract had been ratified. It was not, and Respondent was notified that its offer was again rejected.

About 20 minutes after the notification to Respondent, officials of Local 106 went to Respondent's office, and requested that Respondent execute a separate agreement with Local 106 because that local had ratified Respondent's offer. Mill Manager Phil Leider refused to do so, saying that there was one contract and one bargaining unit at the facility.

Local 106 filed a grievance over Respondent's refusal to sign a separate contract with it. Respondent denied the grievance on the ground that a new contract had not been ratified and executed, and inasmuch as the contract was between the UPIU and IBFO as "joint representatives," until the joint representatives ratify and execute the contract, there was no new agreement.

Thereafter, on May 20, 1996, the parties entered into a new collective-bargaining agreement, with Respondent agreeing that by signing such agreement, Local 106 does not waive its position in the instant case that it is "already party to a separate contract with [Respondent] covering the powerhouse."

As set forth above, the complaint alleges that on November 1, Local 106 and the Respondent reached complete agreement on the terms and conditions of employment of the 25 unit, and that on November 10, Respondent refused the request of Local 106 to execute the contract.

### III. ANALYSIS AND DISCUSSION

#### 1. The contentions of the parties

The General Counsel argues that the power plant constitutes a separate bargaining unit, and that Local 106 and the UPIU locals engaged in coordinated bargaining, and not multiunion bargaining.

Local 106 argues that the effect of Respondent's refusal to sign the agreement on November 10 following its ratification of the contract was that the new agreement delayed for more than 6 months, to May 20, 1996, the raises that employees represented by Local 106 would have obtained on November 1, 1995.

Respondent argues that the UPIU locals and Local 106 were joint representatives, and that no new contract was effective until it was ratified by the joint representative. Respondent alternatively contends that the request of Local 106 that Respondent sign the agreement, constituted an improper premature withdrawal from joint bargaining.

#### 2. Local 106 and the UPIU Locals are joint representatives

The evidence establishes that Local 106 and the three UPIU locals acted as joint collective-bargaining representatives for the single unit involved here.

Thus, the collective-bargaining agreement has historically set forth that it is by and between the Respondent and the UPIU and IBFO, and that Respondent recognizes both the UPIU and IBFO as the "agencies representing their membership" in the Mill. Accordingly, there has been one collective-bargaining contract covering all employees represented by both organizations.

The Board has found that the same Unions involved here at Respondent's facility, which at that time was part of a larger geographic unit which included other mills, were joint representatives. *International Paper Co.*, 97 NLRB 764, 766 (1951). The procedure used here in collective bargaining—the formulation by all the Unions of one agenda, negotiations between the joint representative and the employer, the preparation of a single contract which was signed by all the unions, and the application of the terms and conditions of the contract to all the employees—is the same as utilized in that case.

A joint representative is the "single exclusive representative for all the employees in the bargaining unit" in which the only two parties are the employer and the joint representative. *Pharmaseal Laboratories*, 199 NLRB 324, 325 (1972).<sup>5</sup>

The General Counsel argues that the UPIU and IBFO are not joint representatives because they each represent employees who work in distinct and discrete areas of the Mill, and who perform different functions. I do not agree. As set forth above, certain employees represented by the IBFO work in areas of the plant covered by the UPIU locals, and one individual who is represented by a UPIU local works in the power plant. In addition, the fact that those employees who worked in jobs represented by the UPIU cast their ballots in the Local 106 ballot box supports a finding of single unit and joint representative status.

Further, the bargaining process supports such a finding. Thus, the general negotiations in behalf of the Unions were conducted through a single, joint bargaining committee chaired by a chief spokesman who represented all four local unions. The committee submitted one proposal, to which the Respondent offered one proposal. The Unions resolved any differences of opinion by majority vote among themselves, and all four locals pooled their ratification votes to determine whether Respondent's offer had been ratified. In the past, one collective-bargaining agreement was signed by all four locals.

Moreover, the Board has found joint representative status where, as here, the locals have different constitutions and by-laws; different officials who are selected by members of each local; different wage rates; different policies concerning grievances; and each local represents different jurisdictions. *Mead Foods, Inc.*, 146 NLRB 1515, 1517 (1964); *Swiff & Co.*, 115 NLRB 752, 754 (1956). "Even if there is to be an

<sup>5</sup> Although in that case the joint representative was certified by the Board as such, the same reasoning should apply where, as here, Respondent recognized and bargained with the joint representative for many years.

administrative division of employees among the Petitioners for the purposes of servicing the employees under a contract negotiated with the Employer, such an arrangement is not necessarily inconsistent with the concept of joint representation.” *Utility Services*, 158 NLRB 592, 593 (1966). In *Yafes Industries*, 264 NLRB 1237, 1250 (1982), the Board found violative an employer’s recognition of a union which had disaffiliated with one of the joint representatives it had bargained with. The Board noted that the joint representatives had represented the employees involved for years, and it was “willing and able” to represent the employees.

As set forth above, a millwide unit is expressly recognized in the collective-bargaining agreement. Thus, the employees covered by the single contract are all the employees who are employed inside and outside the plant.

I reject the General Counsel’s argument that the locals involved here did not intend to bargain as a single merged unit inasmuch as the unions maintained separate offices and administrative facilities, had their own stewards who serviced the employees they represented, had their own grievance machinery, and had separate wage schedules. *Consolidated Papers*, 220 NLRB 1281 (1975). In view of the above evidence, including the membership in Local 106 of employees performing jobs covered by the UPIU locals, it cannot be maintained that Local 106 has continuously maintained a separate and identifiable unit. Historically, and in the 1995 negotiations, there was a clear intent by Local 106 to bargain jointly, and it has over many years, done so as a joint representative with the UPIU locals. This is a situation in which Local 106 improperly sought to sever a group of employees from an established plantwide unit. *Teamsters Local 705 (Roper Corp.)*, 244 NLRB 522, 525 (1979).

I further find that Local 106 was not justified in attempting to withdraw from joint bargaining. Such attempted withdrawal was untimely as it did not occur prior to the 20 commencement of bargaining. *Plumbers Local 525*, 171 NLRB 1607, 1642 (1968). In fact, Local 106 attempted to withdraw only after it ratified the Respondent’s offer a second time.

Moreover, there was no evidence that the decision to withdraw contemplated a “sincere abandonment, with relative permanency, of the . . . unit and the embracement of a different course of bargaining on an individual . . . basis.” *Wood, Wire & Metal Lathers Local 260 (Associated Plastering)*, 228 NLRB 1347, 1351 (1977).

I accordingly find and conclude that Respondent did not violate the Act by refusing to execute the collective-bargaining agreement as demanded by Local 106.

#### CONCLUSIONS OF LAW

1. International Paper is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local Union 106, Fireman & Oilers Conference, SEIU, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The collective-bargaining unit set forth above limited to the powerhouse department is not an appropriate collective-bargaining unit.

4. Respondent has not engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act in any manner, as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>6</sup>

#### ORDER

The complaint is dismissed.

<sup>6</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.